Supreme Court, U.S.
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No. 95-1261

In The

Supreme Court of the United States

October Term, 1995

REVEREND HOMER GREEN,

Petitioner,

vs.

UNITED PENTECOSTAL CHURCH INTERNATIONAL,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the courts below erred in properly dismissing this matter for lack of subject matter jurisdiction under previous precedent and the United States and Texas Constitutions.

LISTING OF PARTIES

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TRIAL COURT JUDGE:

The Honorable Paul R. Davis, Jr.
Presiding Judge
200th Judicial District
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JUSTICES OF THE THIRD COURT OF APPEALS:

The Honorable Jimmy L. Carroll
Chief Justice
The Honorable Marilyn Aboussie
Justice
The Honorable J. Woodfin Jones
Justice
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TABLE OF CONTENTS

	Page
Questions Presented	i
Listing of Parties	ii
Table of Contents	iv
Table of Citations	iv
Opinions Below	1
Statement of the Case	1
Reasons for Denying the Writ	5
Conclusion	16

TABLE OF CITATIONS

Cases Cited:

City of Houston v. Clear Creek Basin Auth., 589 S.W. 2d 671 (Tex. 1979)	15
Denison v. Haeber Roofing Co., 767 S.W. 2d 862 (Tex. App. — Corpus Christi 1989, *no writ*)	15
Gray v. Saint Matthews Cathedral Endowment Fund, 544 S.W. 2d 488 (Tex. Civ. App. — Texarkana 1976, *ref'd n.r.e.*)	9

Contents

Page

Green v. United Pentecostal Church International, 899 S.W. 2d 28 (Tex. App. — Austin, 1995, *writ denied*) 1

Green v. Westgate Apostolic Church, 808 S.W. 2d 547 (Tex. App. — Austin 1991, *writ denied*) 1, 3, 10, 11

Hill v. Sargent, 615 S.W. 2d 300 (Tex. Civ. App.— Dallas 1981, *no writ*) 9

Hughes v. Keeling, 198 S.W. 2d 779 (Tex. Civ. App. — Beaumont 1976, *no writ*) 6

Hutchison v. Thomas, 789 F.2d 392 (6th Cir. 1986) 11

Jones v. Hutchinson County, 615 S.W. 2d 927 (Tex. App. — Amarillo 1981, *no writ*) 14

Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S. Ct. 143, 97 L. Ed. 2d 120 (1952) 8

Mangum v. Swearingen, 565 S.W. 2d 957 (Tex. Civ. App. — San Antonio 1978, *ref'd n.r.e.*) 9

McClure v. Salvation Army, 460 F.2d 553 (5th Cir.), *cert. denied*, 409 U.S. 896, 93 S. Ct. 132, 34 L. Ed. 2d 153 (1972) 8

Natal v. Christian and Missionary Alliance, 878 F.2d 1575 (1st Cir. 1989) 13, 14

Contents

Page

Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc., 552 S.W. 2d 865 (Tex. Civ. App. — Texarkana 1977, *no writ*) 9

Serbian Eastern Orthodox Diocese v. Milirojevich, 426 U.S. 696, 96 S. Ct. 2372 (1976) 6, 12

Schismatic and Purported Casa Linda Presbyterian Church in America v. Grace Union Presbytery, Inc., 710 S.W. 2d 700 (Tex. App. — Dallas 1986, *ref'd n.r.e.*), *cert. denied*, 484 U.S. 823, *reh'g denied*, 484 U.S. 970 (1987) 14

Simpson v. Wells Lamont Corp., 494 F.2d 490 (5th Cir. 1974) 5, 7, 8

Watson v. Jones, 80 U.S. (13 Wall.) 679, 20 L. Ed. 666 (1872) 6, 10

Watson v. Zep Manufacturing Co., 582 S.W. 2d 178 (Tex. Civ. App. — Dallas 1979, *writ ref'd n.r.e.*) ... 15

United States Constitution Cited:

First Amendment 1, 6, 9

Respondent, United Pentecostal Church International, submits this Brief in Opposition to the Petition for Writ of Certiorari filed by the Petitioner, Reverend Homer Green. For clarity, Rev. Green will be referred to herein as "Green," and United Pentecostal Church International will be referred to as the "Church."

OPINIONS BELOW

This case arises out of the same transaction and facts as the Texas Third Court of Appeals and the Texas Supreme Court considered in *Green v. Westgate Apostolic Church*, 808 S.W. 2d 547 (Tex. App. — Austin 1991, *writ denied*). The Petitioner, Reverend Green, was a party to that previous suit. The instant case for consideration in this instance, arises from the same facts as the case cited above, and those cited in the Third Court of Appeals' opinion in *Green v. United Pentecostal Church International*, 899 S.W. 2d 28 (Tex. App. — Austin, 1995, *writ denied*). Green sued the Church for damages arisings from the Church's cancellation of his affiliated minister's license under theories of contract and tort. The trial court, 200th Judicial District, Travis County, Texas, Paul R. Davis, Jr., presiding, granted the Church's motion to dismiss for lack of jurisdiction, concluding that the First Amendment to the United States Constitution precluded the court's jurisdiction over the suit. The Third Court of Appeals, Austin, Jimmy L. Carroll, Chief Justice, affirmed the trial court's order dismissing Green's action. *Id.* at 28. On September 14, 1995, the Supreme Court of Texas issued its order denying Green's Application for Writ of Error. Each of the above orders and opinions are contained in the Appendix of Green's Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Green was a licensed Pentecostal minister, licensed by the Church. In 1989, charges were brought against Green by the

Texas District Board of the Church. On August 31, 1989, David Gray, the Regional Presiding Officer of the Southwest Region of the Church, wrote Green to notify him of the charges, which involved alleged immoral conduct that was disruptive to the local congregation. *See* Affidavit of David Gray, Tr. 31-56. Gray wrote to Rev. E. L. Holley, the District Superintendent of the Texas District, the same day to acknowledge receipt of the charges against Green. *Id.* In that letter, Gray told Holley and the District Board, "that all provisions of the judicial procedure must be scrupulously complied with." Tr. 40-41. In both the letter to Green and the letter to Holley, Gray called attention to several key passages of the section of the Manual of the Untied Pentecostal Church dealing with judicial procedure for ministers. Two of the passages read as follows:

> Any attempt to prejudice the fellowship (for or against the accused) through any other process outside of this Judicial Procedure could result in significant and substantial disciplinary action against anyone responsible.
>
> In order to insure the integrity of this judicial procedure, any intimidation, or attempt to intimidate the defendant, plaintiff, presiding officer, jurors, counselors or witnesses by oral, written or physical means or the threat of same, or any action to obstruct the process of this judicial procedure, shall result in significant and substantial disciplinary action against those who are responsible for such conduct and this action may include, but is not limited to, loss of minister's license.

Id.

Throughout the proceedings leading up to the pre-trial hearing, the Texas District followed the judicial procedures prescribed by the Church. Tr. 32-34. A date was set for a pre-trial hearing, and a three member tribunal was called to hear the case. *Id.* The panel was composed of Gray, Rev. Billy Pendergrass, and Jesse Williams. *Id.* Green asked Ron Walls and H.K. Duke to be his counselors for the proceedings. *Id.* Under judicial procedures, the three-member panel is akin to a grand jury, and it receives evidence to determine whether there is sufficient evidence for the matter to go to trial.

During the time leading up to the pre-trial hearing, Green was involved in a civil suit in Travis County District Court against the Westgate Apostolic Church and some of its individual members. *See Green v. Westgate Apostolic Church*, 808 S.W. 2d 547 (Tex. App. — Austin 1991, *writ denied*). That suit involved a dispute over control of the Westgate church and its property. The lawsuit sought exemplary damages from the individuals sued by Green, three of which came forward to testify in the pre-trial hearing. Tr. 32-34.

The pre-trial hearing was held in Austin on November 28 and 29, 1994. While Jana Cook and Nelda Johnson, two of the witnesses against Green, were waiting to testify at the pre-trial hearing, they were served with notices of intent to take their oral depositions with attached *subpoena duces tecum*. *Id.* Given the irrelevance of Cook's and Johnson's allegations to the then pending civil suit, the Church perceived this action to be a deliberate attempt to intimidate witnesses to the ecclesiastical proceeding.

Immediately following the pre-trial hearing, and while the presiding officers were still present, Green caused the records and tapes of the pre-trial hearing to be subpoenaed for use in the pending civil suit. *Id.* Such action flies in the face of Church

regulations, as Section 6 of Article V of the Judicial Procedure for Ministers states, "[A]ll transcripts and records of the hearing shall be the property of the" Church, and that the records "cannot be opened except by the approval of the Executive Board." As a result of these events, Gray recommended to the Executive Board that Green be dropped as a Pentecostal minister. *Id.* In his letter to the Executive Board, Gray stated:

> Because of the outrageous and blatant disregard for ethics and Christian principle and the complete lack of any attempt on his part to comply with these requirements, I herewith recommend to the Executive Board that Homer R. Green be dropped from the fellowship of the United Pentecostal Church. His attempt to disrupt and destroy the judicial procedure of the United Pentecostal Church is reprehensible.

Tr. 52-53.

Ken Gurley, District Counselor, also wrote to the Executive Board and expressed his opinion that, based on the intimidation practiced by Green, he should be dropped as a minister and the trial should not be had. Tr. 60-61.

The members of the tribunal of the pre-trial hearing made the decision that enough evidence existed for there to be a trial on the charges previously made against Green. Tr. 55-56. The Executive Board initially decided not to follow the recommendations that Green be dropped as a minister and that the ecclesiastical proceedings should continue. Later actions by Green changed their minds.

Following the pre-trial hearing, Green's counsel in the civil suit subpoenaed the two women who had alleged that Green had engaged in immoral conduct. Tr. 58. Gurley described Green's actions as "gross intimidation," and this last act by Green was essentially the straw that broke the camel's back. When the General Board of the Church met on January 16, 1990, it was presented with the evidence of the intimidation by Green. *See* Affidavit of C.M. Becton, Tr. 6364. As stated in the minutes of that meeting, a

> [M]otion [was] made and seconded that Homer Green be dropped as recommended by the Presiding Officer. The reason for this being because of the outrageous and blatant disregard for the ethics and Christian principle and complete lack of any attempt on his part to comply with the requirements of the Judicial Procedure with regard to intimidation of witnesses. Carried.

Tr. 63-64, 66. Green was notified of this action by a certified letter from Becton on January 17, 1990. Tr. 68-69.

REASONS FOR DENYING THE WRIT

This case involves the most basic of religious questions: who can preach from the pulpit of a church. *Simpson v. Wells Lamont Corp.*, 494 F.2d 490 (5th Cir. 1974); S.F., p. 144-45. Green states that the Church denied him a "purely factfinding" hearing by the Church before revocation of his license to preach in churches affiliated with the United Pentecostal Church International; however, the Church, after evidence of Green's flagrant violation of the Church's beliefs, chose to no longer allow him to affiliate with the Church. This denial of affiliation is something Green himself acknowledges the church has the

power to do. S.F., p. 120-22. Green, as stated in his own brief to the court of appeals, attempted to bring the Church into civil court to "be the subject of a secular damage suit." Green's brief to the court of appeals, page 2. Green is not attempting to again become affiliated with the Church, as "[N]obody has to take a minister that doesn't want to." S.F. 45.

The civil court does not have subject matter jurisdiction over the claims made by Green because it brings into question the decision of an ecclesiastical body as to the retention of a minister. This, then, is the real issue before the Court today.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

U.S. Const. amend. I.

These first few words of the Bill of Rights make it clear that government and religion are to remain separate. More specifically for this appeal, it has been well settled for over 120 years by the United States Supreme Court, and by the Texas Supreme Court, that when questions of discipline, of faith, or of ecclesiastical rule, custom or law have been decided by the highest authority of a church judicatory, secular civil courts must accept such decisions as final, and as binding on them, in their application to the case before them. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710, 96 S. Ct. 2372, 2381 (1976) *quoting Watson v. Jones*, 13 Wall. 679, 20 L. Ed. 666 (1872); *Hughes v. Keeling*, 198 S.W. 2d 779 (Tex. Civ. App. — Beaumont 1946, *no writ*). The trial court dismissed this suit on the basis that it had no subject matter jurisdiction, and, in his appeal, Green seeks to have the Court reverse this long line of precedent supporting the trial court's decision. It should be noted that Green tries to focus on the facts of his suit against the Church

in his brief, but the issues of the underlying suit should not be reached as, due to the lack of jurisdiction, the court had no power other than to dismiss the case.

As was noted by the courts below, this issue was succinctly resolved by the *Simpson* court:

> This case involves the fundamental question of who will preach from the pulpit of a church, and who will occupy the church parsonage. The bare statement of the question should make obvious the lack of jurisdiction of a civil court. The answer to that question must come from the church. The District Court dismissed this civil rights suit brought by a pastor for damages for his ouster by church officials. As if the long history of separation of ecclesiastical courts and civil courts prior to and since the founding of this country were not sufficient to ground an affirmance, the first words of the Bill of Rights in the United States Constitution would clearly establish the unconstitutionality of any law asserted on behalf of the plaintiff . . . The people of the United States conveyed no power to Congress to vest its courtswith jurisdiction to settle purely ecclesiastical disputes.

Simpson, 494 F.2d at 496.

Green was able to utilize the procedures set forth by the Church. Green lost his license after the Church governing board reviewed his alleged infractions of Church doctrine and ecclesiastical judicial procedure. *See* Defendant's Motion to

Dismiss and accompanying evidence, Transcript (hereinafter "Tr."), 19-116, 37-43, 52-53, 55-6; Tr. 60-61, S.F., p. 101, 104, 107, 113-18. He specifically violated provisions of ecclesiastical conduct prohibiting the intimidation of witnesses and the subpoenaing of Church documents. *Id*; *see also*, Tr. 62-66. After the revocation of his license, Green attempted an appeal within the Church. S.F. 28, 117-18. The Church allowed him to follow its ecclesiastical process as contained in Manual of the United Pentecostal Church, and he was dismissed according to the procedures outlined in the Manual. Tr. 72-87.

Church structure creates a "spirit of freedom for religious organizations, an independence from secular control or manipulation in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116, 73 S. Ct. 143, 97 L. Ed. 2d 120 (1952). The interaction between the church and its pastor is an integral part of church government. *Simpson* at 493. The Supreme Court has reaffirmed the principle that civil courts are not an appropriate forum for review of internal ecclesiastical decisions. *Id.* at 494.

> The relationship between an organized church and its ministers is its life blood. The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern. Just as the initial function of selecting a minister is a matter of church administration and government, so are the functions which accompany such a selection.

McClure v. Salvation Army, 460 F.2d 553 (5th Cir.), *cert. denied*, 409 U.S. 896, 93 S. Ct. 132, 34 L. Ed. 2d 153 (1972).

The decision of the Church to terminate Green's license was a purely ecclesiastical matter. The civil courts of this country are prohibited by the First Amendment from interfering in the purely ecclesiastical or administrative affairs of a church. *Hill v. Sargent*, 615 S.W. 2d 300, 301 (Tex. Civ. App. — Dallas 1981, *no writ*). Green was dismissed as an act of discipline, and questions of church discipline and government are left to the church limited only by the courts' supervision of property and civil rights. *Mangum v. Swearingen*, 565 S.W. 2d 957, (Tex. Civ. App. — San Antonio 1978, *ref'd n.r.e*); *Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc.*, 552 S.W. 2d 865 (Tex. Civ. App. — Texarkana 1977, *no writ*); *Gray v. Saint Matthews Cathedral Endowment Fund*, 544 S.W. 2d 488 (Tex. Civ. App. — Texarkana 1976, *ref'd n.r.e.*).

Although Green has raised in his Points of Error issues related to his constitutional rights, he made no allegations other than under theories of contract and tort, and, therefore, no property or civil rights are invoked. Plaintiff's First Amended Original Petition, Tr. 218-231; Green brief to the court of appeals, pp. 1-2. This issue has been waived on appeal. Green's lawsuit only focuses on requiring a judge and jury to review the Church's decision to drop him as a minister.

As stated by the Supreme Court over 120 years ago, and approved just 20 years ago:

> The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the

> ecclesiastical government of all the individual members, congregations, and officers within the general association is unquestioned. *All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeal as the organism itself provides for.*

Watson v. Jones, 80 U.S. (13 Wall.) 679, 728-29, 20 L. E. 666 (1871) (emphasis added). This passage is directly on point in the case of Green.

If this Court were to reverse the decision of the trial court, it would contribute to the subversion of the Church as warned against in *Watson*. Green consented to the government of the Church when he voluntarily joined and sought the Church's license to be a minister within it. Now, he seeks a secular court's review, and such review would be improper, and this case was properly dismissed for want of jurisdiction.

An additional bar against review of this case is the fact that the Church is a hierarchical church. The Third Court of Appeals previously decided that issue in *Westgate Apostolic*, 808 S.W. 2d at 551. Once again the civil court has properly deferred to Church

laws. *See id.* Both the Supreme Court and Texas courts have granted heightened deference to hierarchical churches. *Id.*

Green also alleges in his brief that the Church made "egregious" breaches of his supposed contractual relationship with the Church. Because Green's allegation of a contractual breach involve the same issues of jurisdiction, it is nothing more than a restatement of his previous Points of Error. As the Sixth Circuit stated in *Hutchison v. Thomas*,

> Appellant is really seeking civil court review of subjective judgments made by religious officials and bodies that he had become "unappointable" due to recurring problems in his relationships with local congregations. This Court cannot constitutionally intervene in such a dispute.

Hutchison v. Thomas, 789 F.2d 392, 393 (6th Cir. 1986).

Green, in a Number 3 of his Questions Presented, also outlines that the court should allow a trial in this matter due to the alleged egregious, fraudulent and collusive character of the Church's actions in contravention of its own written guaranties of judicial fairness, as embodied in its *Judicial Procedure for Ministers*. Green's brief to the Court of Appeals, pp. 3-9. This argument also goes to facts of his underlying contract and tort claims and not to the issue of the court's lack of subject matter jurisdiction.

Even if the Church failed to follow its own procedures, courts are not permitted to pass on its decision to dismiss Green. As stated above and noted by the trial court at the hearing, the Church did follow its procedures as outlined in the Manual and even if it did not, the Church's conduct did not rise to the level

that secular civil review would be warranted. *See Milivojevich*, 426 U.S. at 713, 96 S. Ct. at 2382; S.F. 145-146. The preamble to the Manual states that intimidation of witnesses or others involved in judicial proceedings "shall result in significant and substantial disciplinary action against those who are responsible for such conduct and this action may include, but is not limited to, loss of minister's license." Tr. 75. The Church ruled, after a hearing that intimidation had occurred, and decided to impose the sanction specifically provided for by the Manual — the revocation of Green's license. Tr. 66. For a civil court to examine that decision would be contrary to the line of authority already referred to above. In any event, the dismissal of this cause was not contingent upon the Church having properly followed its own procedures.

As the court in *Serbian* stated:

> For civil courts to analyze whether the ecclesiastical actions of a church judicatory are . . . "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else in to the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decision of church tribunals as it finds them.

Serbian, 426 U.S. at 713, 96 S. Ct. at 2382.

This statement by the Supreme Court makes it clear that Green's claim that the Church's decision was "arbitrary, fraudulent or collusive" does not open the door for this Court to review the Church's decision, and this cause was properly dismissed for want of subject matter jurisdiction. In *Natal v. Christian and Missionary Alliance*, 878 F.2d 1575 (1st Cir. 1989), the court rejected the plaintiff's argument that the church's decision to discharge him as a minister was subject to review by the Court because he had been denied due process because the church had failed to follow its own rules. In rejecting this argument, the court stated,

> Plaintiff's effort to distinguish the long line of precedents on the ground that the Church . . . failed to follow its own rules, thereby denying the pastor "due process," is unavailing. We look to the substance and effect of plaintiff's complaint, not its emblemata. Howsoever a suit may be labelled, once a court is called upon to probe into a religious body's selection and retention of clergymen, the First Amendment is implicated.

Natal, 878 F.2d at 1577. The court went on to state that,

> By its very nature, the inquiry which Natal would have us undertake into the circumstances of this discharge plunges an inquisitor into a maelstrom of Church policy, administration, and governance. It is an inquiry barred by the Free Exercise Clause.

Id. at 1578.

The inquiry requested by Green in the instant case is identical to that sought by the minister in *Natal*. The courts below, like the court in *Natal*, properly refrained from passing on such matters even if it questioned whether the Church followed it own procedures. S.F. 145-46. As the courts below recognized, and as stated in *Schismatic and Purported Casa Linda Presbyterian Church in America v. Grace Union Presbytery, Inc.*, 710 S.W. 2d 700, 707 (Tex. App. — Dallas 1986, *ref'd n.r.e*), *cert. denied*, 484 U.S. 823, *reh'g denied*, 484 U.S. 970 (1987):

> [Appellants] urge us to depart from prior Texas law, which we have shown has consistently followed the deference rule, and to adopt the neutral principles of law rule approved by the United States Supreme Court in *Jones* [*v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979)]. We recognize that in 1909 the Supreme Court may have felt compelled to follow the deference rule because it thought the *Watson v. Jones* decision required its application at the time *Brown v. Clark* [102 Tex. 323, 116 S.W. 360 (1909)] was decided and that the lower courts felt compelled to follow *Brown v. Clark*. Even though the *Jones v. Wolf* decision now gives the states a choice of methods to resolve hierarchical church property disputes, our supreme court has nevertheless spoken on this issue.

Texas appellate courts are bound by the Texas Supreme Court's pronouncements until it rules to the contrary. *Casa Linda*, 710 S.W. 2d at 707 *quoting Jones v. Hutchinson County*, 615 S.W. 2d 927, 933 (Tex. App. — Amarillo 1981, *no writ*). Where the law is settled, the obligatory course for a court is judicial self-restraint.

See Watson v. Zep Manufacturing Co., 582 S.W. 2d 178, 180 (Tex. Civ. App. — Dallas 1979, *writ ref'd n.r.e.*).

Finally, Green attacks the form of the evidence used by the Church in the motion to dismiss. It should be noted that Green failed to file a response with the trial court to the motion to dismiss and challenging the evidence attached thereto, and he has waived his objections to the form of the evidence. *Cf. City of Houston v. Clear Creek Basin Auth.*, 589 S.W. 2d 671, 678 (Tex. 1979); *Denison v. Haeber Roofing Co.*, 767 S.W. 2d 862, 865 (Tex. App. — Corpus Christi 1989, *no writ*). In addition, Green stated he had no objection to the affidavit of Ken Gurley, Tr. 57-61, so any objection to that evidence was waived. S.F. 63-64.

In the affidavit of David Gray, Tr. 31-56, Green only objected to the sentence contained on Tr. 33 which begins, "The pre-trial hearing . . ." The basis of the objection was that it was incorrect information (S.F. 67-68), and the court overruled that objection, as it was not — and is not — a valid objection. Green had no objection to any other part of the affidavit or its attachments. S.F. 68.

The court sustained the objection to that paragraph of Becton's affidavit (Tr. 62-70) contained on p. 63 of the Transcript which begins "[F]ollowing the pre-trial hearing . . . ," and Green had no objection to any other portion of the affidavit or its attachments, therefore waiving any other objections. Therefore, any other objections to this Court as to the evidence presented by the Church were also waived.

CONCLUSION

Green's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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